

September 19, 2013

Mr. Curtis Spalding
Regional Administrator
EPA Region 1
5 Post Office Square, Suite 100
Boston, MA 02109

SUBJECT: Petition for a Determination that Stormwater Discharges from Commercial, Industrial and Institutional Sites Contribute to Water Quality Standards Violations and Require CWA Permits

Mr. Spalding:

We understand that EPA must issue a final Record of Decision (ROD) within 90 days of receipt of the above referenced petition, which was submitted on July 10, 2013. The purpose of this letter is to explain why EPA should reject the petition as the ROD is composed and finalized.

As you know, Residual Designation Authority (RDA) was implemented in 2009 within the Long Creek watershed that flows through South Portland, Portland, Westbrook and Scarborough, Maine. The parties to this letter have been stakeholders in that arduous process. Although there are varying opinions on why RDA application was relatively successful in Maine, it is unanimously agreed that almost two years of collaborative efforts and collective negotiations among stakeholders preceded the regulatory hammer of the ROD and resulting RDA implementation in this small watershed. Careful groundwork was the key to successful implementation of the Long Creek RDA.

There are several concerns that we wish to express in connection with this petition.

1. Broad Sweep of the Petition. The Petition is too broad (geographically and topically).

Geographically, the petition is too broad by naming:

- Over 250 impaired segments in CT
- Over 700 in MA
- Over 150 in ME
- Over 600 in NH
- Over 150 in RI
- Over 50 in VT

Based on our years of experience in Long Creek's 3.5-square-mile watershed, an attempt to apply RDA over the proposed vast aggregate geographic area within New England would be daunting. The effective stakeholder outreach and partnerships that were formed during, and facilitated, the Long Creek process are nearly impossible to replicate on a larger, more diverse scale throughout EPA Region 1/New England. In addition to the geographic area being too broad, the petition is far too sweeping in its subject matter, apparently targeting

every watershed in Region One that is impaired by any of several contaminants. It fails to consider the diverse nature of the included watersheds. We ask EPA to consider the following points:

- The **diversity in stakeholders** must be recognized from state to state (VT to CT), within a single State (like northern and southern ME) or within a single watershed (like the Charles and Blackstone Rivers in MA).
- The **runoff/discharges from impervious areas** are radically different from rural ME (Dudley Brook in Chapman) to suburban ME (Concord Gully in Freeport, ME) to urban MA (Charles River in Boston, MA).
- The **contaminants of concern for each watershed** are unique and may not be accurately served by using impervious surface area as a surrogate for specific contaminants (e.g., nitrogen in the watersheds contributing to Great Bay in NH).
- The **size of the watersheds and sources of runoff within the watersheds** vary widely, from lake watersheds exceeding 57,000 acres (north arm of Lake Champlain, VT), pond watersheds as small as 4 acres (Alden Pond in Ludlow, MA) to riverine watersheds draining hundreds of square miles (Blackstone River in Worcester, MA and Charles River in Boston, MA).

There are serious questions as to whether the EPA can legally grant a petition this broad. While EPA regulations may allow RDA to be applied to a "category" of discharges rather than being limited to a single discharge, there is no rational "category" into which all the discharges which are covered by this petition would fall. The only characteristics they have in common is that they are storm water discharges within the jurisdiction of EPA Region One.

If EPA had the authority to grant this petition as written, it would have the authority, with 90 days notice, to require permits for every impaired water body in the United States. A designation as broad as this petition requests goes far beyond the scope of EPA's Residual Designation Authority.

2. Time. The time period in which EPA is required to make a decision on this petition is 90 days. That limited time frame, without any provision for expansion, shows that the intent of RDA was to focus on individual discharges or narrow categories of discharges. Putting aside the significant due process concerns for the communities involved, ninety days is simply not enough time to evaluate this sweeping petition. For that reason alone, it should be rejected.

As noted above, at least two years of public process and negotiation preceded the implementation of RDA in Maine's Long Creek watershed. RDA still has not been fully implemented in the portion of the Charles River watershed that was officially designated several years ago. Successful implementation of RDA, or any other approach to watershed storm water management, requires time to educate the communities involved and address their concerns. Aside from the fact that 90 days is not enough time to evaluate the merits of a petition this broad, it needs to be considered whether it is possible to implement the resulting permits uniformly and fairly.

3. Costs. The annual fee for impervious surfaces merely to exist within the Long Creek watershed is \$3,000 per acre each year. This fee applies to existing infrastructure such as roads, bridges and sidewalks that provide a public service to all entering the region. We understand that the petition is intended to establish regional Watershed Management Districts throughout New England that will collect similar fees as part of the proposed NPDES permits. This money would, in turn, fund potential watershed improvements. We believe that the assessment of these fees across the nearly 2,000 watersheds covered by this petition will place an undue financial and regulatory burden on private and public stakeholders. The money spent in efforts to restore these impaired waters would also divert money that could be better used to protect healthy watersheds.

4. Impact on Current Efforts. There are many voluntary watershed management efforts underway in some of the watersheds listed in the petition. These local community-supported efforts may be stalled as a result of the unknown implications or unintended consequences of the RDA application and accompanying NPDES permit requirements. For example, communities and organizations may be reluctant to begin or continue their current work if there is a chance that their efforts will prove inconsistent with proposed permit requirements. Applying RDA to these currently unpermitted areas may make it difficult for communities to leverage grant funds to implement watershed management plans and projects.

5. Punishment for being Proactive – Maine, like the much of EPA Region 1/New England, has been proactive and innovative with respect to CWA implementation. For example:

- **Adoption of non-traditional Total Maximum Daily Loads (TMDLs)** that assign a surrogate contaminant of concern, such as impervious cover, to a specific receiving waterbody (Eagle Brook in CT) or an entire State (Maine Statewide TMDL for impervious cover);
- **Local watershed management planning** efforts incorporate the most recent techniques to increase awareness and adoption of effective structural and non-structural best management practices, including the importance of disconnecting stormwater runoff from impervious areas to improve water quality conditions; and
- **Recent RDA applications** have already been introduced in VT, ME and MA. These provide a real motivation for neighboring communities throughout New England to address stormwater practices and watershed management restoration and protection.

Similar proactive measures have been implemented in the other two regions currently subject to petition: Region 3 (headwaters of the Chesapeake Bay watershed) and Region 9 (arid and water-starved Southwest/CA). The message to other regions will be counterproductive. If EPA grants this petition, it will send a message that the status quo is acceptable in Regions 2, 4 through 8, and 10 while Regions 1, 3 and 9 are singled out for arbitrary enforcement -- almost as though to punish them for prior progress.

We respectfully request that EPA reject the July 10 petition. It will place undue financial and regulatory burden in many areas where proactive stormwater and watershed management practices are already being implemented. Based on our collective experiences with RDA application in the Long Creek watershed, the petition's broad approach would not have the same success as the smaller, more focused effort in Maine. Since there are so many questions associated with this petition (e.g., what will permit requirements be, how will non-de minimis quantities be defined, etc.), unintended consequences of the petition may include: derailment of ongoing voluntary community-supported watershed-specific efforts, litigation due to the broad nature of the proposed determination, and excessive financial burden to many private and public stakeholders, as well as diversion of funds previously allocated to protect healthy watersheds.

Sincerely,



Peter Mills, Executive Director
Maine Turnpike Authority



Dana Connors, President
Maine Chamber of Commerce



Christopher Hall, CEO
Portland Regional Chamber of Commerce



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